

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In The Matters Of:	)	
	)	
Vuze, Inc. Petition for Rulemaking	)	
to Establish Rules Governing Network	)	
Management Practices By Broadband	)	
Network Operators	)	WC Docket No. 07-52
	)	
And	)	
	)	
Free Press et al Petition for	)	
Declaratory Ruling	)	

To the Commission:

COMMENTS OF THE  
UNITED STATES INTERNET  
INDUSTRY ASSOCIATION ("USIIA")

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## Introduction and Summary

The US Internet Industry Association ("USIIA") submits these comments in response to a Petition for Rulemaking<sup>1</sup> and a Petition for Declaratory Ruling<sup>2</sup> filed with respect to efforts by broadband network operators to maintain the integrity of their networks and the Internet experiences of their subscribers through network management practices.

USIIA notes that the two requests, though based on differing events, substantively petition for the same outcome – that the Commission preemptively establish rules for effective management of an intelligent broadband network. USIIA further notes that it would be virtually impossible for the Commission to anticipate both the evolution of the intelligent broadband networks and the circumstances under which more advanced or flexible network management practices might need to be adopted in order to protect the security, integrity and deliverability of content and information over the internet consistently to all subscribers to broadband Internet Services.

USIIA therefore requests that the Commission decline both the petition for rulemaking and the petition for a declaratory ruling. Rather, the Association supports the Commission's existing practice of reviewing each event within its unique context and ruling on the basis of the circumstances of each event.

## Statement of Standing

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<sup>1</sup>Vuze, Inc. Petition for Rulemaking to Establish Rules Governing Network Management Practices By Broadband Network Operators, WC Docket No. 07-52, filed Nov. 14, 2007.

<sup>2</sup> Free Press, Public Knowledge, Media Access Project, Consumer Federation of America, Consumers Union, Information Society Project at Yale Law School, Professor Charles Nesson, Co-Director of the Berkman Center for Internet & Society, Harvard Law School, Professor Barbara van Schewick, Center for Internet & Society, Stanford Law School, Petition for Declaratory Ruling, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, GN Docket No. 00-185, CS Docket No. 02-52, WC Docket No. 07-52, filed Nov. 1, 2007.

USIIA is a national trade association of competitive companies engaged in Internet commerce, content and connectivity. Its members constitute a broad cross-section of the Internet industry, providing consensus on policy issues that breach the competitive interests of any single member or segment of the industry.

USIIA reaches its public policy positions through a process of consensus that is directed by a Board of Directors elected annually by the members of the Association. Those positions are based on the best interests of the majority of members and of the industry as a whole. These positions are not subject to the whim of any single segment of the industry, and are not affected by financial arrangements, marketing agreements or other external forces.

As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and competitive parity, and to continue to advocate for the expansion of broadband services to all Americans, USIIA has standing to file these comments.

## **Statements and Conclusion**

The US Internet Industry Association recognizes the difficulties involved in balancing the needs of the few with the needs of the many. The design and engineering bases of the Internet were never intended to support an evolving generation of applications designed to enable some subscribers to use applications and services that by their very nature degrade the service that is available to other subscribers on the same network.

At the same time, it must be noted that despite the fanciful re-interpretation of the FCC's principles for broadband connectivity, these principles only guarantee that consumers should have the right of access to applications and services of their choice. They state:

- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to access the lawful Internet content of their choice.<sup>3</sup>
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.<sup>4</sup>

That is to say, there is nothing in the referenced events that violates these principles, and on the basis of these principles alone the FCC does not have the grounds to issue a declaratory ruling with regard to effective management of intelligent networks.

With respect to the Vuze request that the Commission open a proceeding to make new rules governing present and future network management practices, the USIIA believes that such an action would be inappropriate, and would create unintended consequences that would be harmful to the interests of consumers, network operators and United States policy. Specifically, the USIIA would note that:

- **The Commission should not engage in second guessing the engineering and network management decisions made by ISPs to respond to an ever-changing and dynamic Internet.** Effective management practices have always been an essential part of the Internet and the thousand or more individual private networks that comprise it. That is why every network operates a Network Operations Center (NOC). The purpose of these centers is to optimize the traffic flow of packets through the network in a manner that 1) attempts to assure delivery of all traffic even though different applications place different stresses on the network; 2) allows for the flow of all traffic with minimal disruption, packet loss, or other technical deficiencies; 3) enhances the

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<sup>3</sup> FCC Policy Statement 0-151, adopted August 5, 2005.

<sup>4</sup> Ibid.

security and integrity of the network against external attack or degradation; and 4) optimizes the Internet experience of all users without guaranteeing the experience of any particular user because of the shared nature of the network. For example, this process would allow network operators to prioritize traffic related to emergency services such as E-911 calls to ensure such emergency traffic is not disrupted by less critical communications. The process would be seriously limited by the adoption of single-purpose rules that could limit or eliminate the benefits identified above and also put the Commission in the position of tying the hands of ISPs just as the Internet and the increasingly sophisticated and bandwidth-intensive applications that it enables could benefit from new capabilities offered by intelligent broadband networks.

- **The Commission should not establish specific practices for effective management of intelligent networks.** The purpose of creating intelligent communications networks is to enable the network operator to be flexible and responsive in crafting practices that assure the viability of the network, provide enhanced services, and protect consumers from potential abuses by malicious third parties. By establishing preemptive rules for these practices, the Commission would place itself in the awkward and untenable position of having to anticipate and respond in advance to every change in technology, every new threat to the integrity of the network, and every new application made available on the Internet. In addition, the Commission would need to then promulgate these preemptive rules with enough speed and flexibility that would allow them to be effective within a dynamic and ever-changing landscape of threat and opportunity. Outsourcing network management decisions from the network engineers who design and operate these networks and who must deal with these issues on a daily basis to a government agency that is not structured to operate in such a fast-changing environment borders on the absurd. Ironically, though the request for such a regulatory regime presumes to be in the best interest of consumers, it is the users of the Internet who would suffer the most from this regime.

- **"Throwing bandwidth at the problem" is not an effective solution.** It has been suggested by some that an effective replacement for network management practices is to simply add capacity to the networks so that no management issues exist. This is an inefficient approach that would add to the costs of handling any given amount of traffic. In addition, there is no guarantee that the growth of Internet traffic, combined with the emergence of new applications requiring yet greater capacity, would not obviate any such effort.

Effective practices for network management have always been essential to the operation of the Internet, and such management will be even more essential in the years to come. Rather than simply acting to anticipate and preempt such practices, the Commission would better serve the needs of the American public by leaving network management decisions in the hands of those who design and operate these networks on a daily basis while supporting industry-led efforts to ensure that consumers have the information they need to make better and informed choices about the services and applications they use on the Internet.

Respectfully Submitted,  
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Dated February 12, 2008